

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

IN RE LINK_A_MEDIA DEVICES CORP.,
Petitioner.

Miscellaneous Docket No. 990

On Petition for Writ of Mandamus to the United States District Court for the District of Delaware in case no. 10-CV-0869, Judge Sue L. Robinson.

ON PETITION

Before RADER, *Chief Judge*, DYK and O'MALLEY, *Circuit Judges.*

PER CURIAM.

O R D E R

The parties move to withdraw or dismiss this petition and Marvell International Ltd. moves to withdraw or vacate this court's December 2, 2011 order granting Link_A_Media Devices Corp.'s (LAMD) petition for writ of

mandamus on the ground that the parties had entered into a settlement agreement before our order issued.

Marvell states that it informed an unidentified individual in this court's clerk office by telephone on December 1 about the settlement. The parties filed the settlement agreement with the district court on December 2, 2011, the same day that the writ issued. The district court then dismissed the case without prejudice on December 5. It was not until December 5 that the parties formally notified this court of the settlement in the motion to withdraw. If the parties had entered into a settlement agreement before issuance of our decision, it was counsel's duty to formally inform this court in writing of the agreement. *Board of License Comm'rs of Tiverton v. Pastore*, 469 U.S. 238, 240 (1985); see also *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.23 (1997) (citing *Pastore*) ("It is the duty of counsel to bring to the federal tribunal's attention, 'without delay,' facts that may raise a question of mootness.") (emphasis in original).

We determine that granting a motion to vacate our order is neither required nor a proper use of the judicial system. See *U.S. v. Payton*, 593 F.3d 881 (9th Cir. 2010) (denying vacatur and dismissal of appeal when mootness arose after appellate court's opinion issued); *Showtime/The Movie Channel, Inc. v. Covered Bridge Condominium Ass'n, Inc.*, 895 F.2d 711, 713 (11th Cir. 1990) (stating that "a motion to dismiss an appeal and to withdraw a decision and opinion once published [should be granted] only in rare cases and for valid reason").

Because the district court dismissed the complaint due to settlement, it need not transfer that dismissed complaint. However, consistent with our sister courts, we

conclude that we should not vacate our order after the matter was decided.

Upon consideration thereof,

IT IS ORDERED THAT:

The motions are denied.

FOR THE COURT

DEC 16 2011

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Daralyn J. Durie, Esq.
Indranil Mukerji, Esq.
Clerk, United States District Court for the District of
Delaware

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FILED
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THE FEDERAL CIRCUIT

DEC 16 2011

JAN HORBALY
CLERK